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U.S. DISTRICT COURT
MIDDLE DISTRICT OF TN

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JACK VICTOR MILLER,	)	
	)	
Plaintiff,	)	
	)	**No. ____________**
v.	)	
	)	**JURY DEMAND**
KENNETH "KENNY" HURST	)	
TEDD GRAVES	)	
NITA MILLER GRAVES	)	
RUSSELL SIMS	)	
SIMS RECORDS	)	
LOVINGOOD MUSIC	)	
ENGLISH MUSIC and	)	
LILLIBETH MUSIC	)	
	)	
Defendants.	)	

COMPLAINT

Plaintiff Jack Victor Miller files this action for copyright infringement of his original musical compositions "Ain't Comin' Home," "Burnin' Rubber (Over All My Burnin' Bridges)," and "Cheater of the Year;" and, original sound recordings of "Ain't Comin' Home," "Burnin' Rubber (Over All My Burnin' Bridges)," and "Cheater of the Year." The Defendants are the performers, writers, producers, publishers, record labels, and distributors of the infringing and derivative musical compositions "Ain't Coming Home," "Burning Rubber (Over Bridges I've Burned)," and "Cheater of the Year;" the infringing sound recordings "Ain't Coming Home" (performed by Kenny Hurst), "Burning Rubber (Over Bridges I've Burned)" (performed by Kenny Hurst), and "Cheater of the Year" (performed by Kenny Hurst); the infringing "Burning Rubber (Over Bridges I've Burned)" music video; and, other products exploiting the infringing musical compositions and sound recordings.

I. THE PARTIES

1. Plaintiff Jack Victor Miller is a professional musician, songwriter, composer, pianist and performer. Plaintiff performs under the name "Jack Victor Miller."

2. Defendant Kenneth "Kenny" Hurst (referred to as "infringing performer") is an aspiring musician, performer, promoter and night club owner. Hurst is believed to be a resident of Tennessee. Hurst conducts systematic and continuous business in Tennessee, including, but not limited to, selling the album "Look Out – Here I Come," containing the infringing sound recordings and musical compositions "Ain't Coming Home," "Burning Rubber (Over Bridges I've Burned)," and "Cheater of the Year," via brick-and-mortar stores in Tennessee and through digital downloads and interactive streams in Tennessee. Hurst has merchandised "Burning Rubber (Over Bridges I've Burned)," selling license plates, signs, hats, etc., bearing the title "Burning Rubber."

3. Hurst's publishing company is Lillibeth Music.

4. Defendant Tedd Graves (referred to as "infringing writer") is a writer of the infringing musical compositions "Ain't Coming Home," "Burning Rubber (Over Bridges I've Burned)," and "Cheater of the Year." He resides in Tennessee. He conducts systematic and continuous business in Tennessee, including but not limited to, selling the infringing songs in Tennessee, distributing the infringing songs in Tennessee, granting licenses for the infringing songs in Tennessee, collecting royalties for the infringing songs in Tennessee, promoting and advertising the infringing songs in Tennessee, and storing business records related to the infringing songs on databases in Tennessee.

5. Tedd Graves' music publisher is Lovingood Publishing Co.

6. Defendant Nita Miller Graves (referred to as "infringing writer") is a writer of the infringing musical compositions "Ain't Coming Home," "Burning Rubber (Over Bridges I've Burned)," and "Cheater of the Year." She resides in Tennessee. She conducts systematic and continuous business in Tennessee, including but not limited to, selling the infringing songs in Tennessee, distributing the infringing songs in Tennessee, granting licenses for the infringing songs in Tennessee, collecting royalties for the infringing songs in Tennessee, promoting and advertising the infringing songs in Tennessee, and storing business records related to the infringing songs on databases in Tennessee.

7. Nita Miller Graves' music publisher is Lovingood Publishing Co.

8. Russell Sims (referred to as "infringing producer") is a producer of the infringing song "Cheater of the Year." He is believed to reside in Tennessee. Sims conducts systematic and continuous business in Tennessee, including but not limited to, granting licenses for the song "Cheater of the Year" in Tennessee, collecting royalties for the song "Cheater of the Year" in Tennessee, promoting and advertising the song "Cheater of the Year" in Tennessee, and storing business records related to the infringing song "Cheater of the Year" on databases in Tennessee. Sims is a world renown record producer with over seventy years in the country music business. Sims' record company is Sims Records.

II. JURISDICTION AND VENUE

9. This Court has subject-matter jurisdiction over this cause under 28 U.S.C.§§ 1331 and 1338 because Plaintiff's claims arise under the Copyright Act, 17 U.S.C. § 101, et seq.

10. This Court has subject-matter jurisdiction over this cause under 28 U.S.C. §§ 1331 and 1338 because Plaintiff's claims arise under the Copyright Act, 17 U.S.C. § 101, et seq.

11. This Court has personal jurisdiction over Defendants because the Defendants' residences are in this judicial district, the Defendants' infringement, individually and in concert with one another, has occurred, and is continuing, in this judicial district, the Defendants and/or their agents operate businesses within this judicial district, and the Defendants conduct systematic and continuous business in this judicial district.

12. Venue is proper under 28 U.S.C. §§ 1391 and 1400 because the infringement is continuing in this judicial district, the Defendants and/or their agents operate businesses within this judicial district, and Defendants are subject to personal jurisdiction in this judicial district.

III. FACTS

Plaintiff's Creation of the Infringing Songs

13. Plaintiff owns and controls his music publishing.

14. Plaintiff has recorded and performed thousands of songs. Plaintiff started singing and writing songs at age seven. Plaintiff has recordings of singing and playing the piano as a young child. He started performing demos in Nashville at age 16 and worked as a backup singer. He studied with world-renown voice coach Renee Grant-Williams. In 1996, while working as a demo singer for Sony Tree Publishing, producer Buddy Killen hired Plaintiff to be the headlining act at the world-famous Stockyard Restaurant and Bullpen Lounge, at that time the most prestigious live venue in the world for country artists. Plaintiff performed in that capacity for eleven months.

15. Throughout his career, Plaintiff has released several widely-distributed recordings, forging relationships with music producers and artists.

16. Plaintiff spent over twenty-three years creating and molding the song "Ain't Comin' Home;" over twenty years co-creating and molding with his father, Jack Ronald Miller, the song "Cheater of the Year;" and over five years creating and molding the song "Burning Rubber (Over Bridges I've Burned) (Over All My Burning Bridges)."

17. Plaintiff does not permit the exploitation of the infringing songs without license and permission, as it represents unique and valuable intellectual property to him.

18. In 2012, Nita Miller Graves informed Plaintiff and others that while selling a car, she met a retired record producer, Russell Sims, country artist/songwriter Tedd Graves, and country artist Kenny Hurst. Per Nita Miller Graves, to get her foot in the door she exaggerated her experience as a songwriter. Without Plaintiff's permission or knowledge, Nita Miller Graves gave Mr. Sims, Mr. Graves and Mr. Hurst almost all of Plaintiff's recorded music. In all, over twenty years of musical compositions by Plaintiff comprised Plaintiff's portfolio, all of which was given by Nita Miller Graves to Mr. Sims, Mr. Graves and Mr. Hurst, under the lie that the songs were written by her. Nita Miller Graves has openly admitted on numerous occasions to multiple people to misleading Mr. Sims, Mr. Graves and Mr. Hurst about the origin and status of Plaintiff's music. Nita Miller Graves revealed to Plaintiff and others her lies regarding Plaintiff's music, months after the fact, allegedly because she became engaged to Tedd Graves. Nita Miller Graves told Plaintiff and others that Tedd Graves, Russell Sims and Kenny Hurst were suspicious about her writing the songs and that she was asked by them multiple times if Plaintiff wrote or co-wrote the songs. The parties knew or should have known Nita Miller Graves did not write the songs. In 2014, Plaintiff told Nita Miller Graves specifically in an email to stop

claiming to be a collaborator on Plaintiff's music, specifically indicating the composition and sound recording "Burning Rubber (Over Bridges I've Burned)."

Plaintiff's Release of "Ain't Comin' Home"

19. In 1995, after several years of challenging work, production end expense, Plaintiff released his first self-titled project "Jack Victor Miller" produced and engineered by Bob Bullock and Jamie Klee for New West Productions. The song was recorded at Battery Studio in Nashville; assistant engineering by Jim Widen, Terry Bates, and Scott Stillman; mastered by Hank Williams at Mastermix. The project was commercially merchandised, clearly with the indication "Copyright 1995." Plaintiff performed the song publicly at venues, including at the Stockyard Restaurant's Bullpen Lounge. The infringing version of this song and sound recording by the infringing writers, performer and producer is identical to Plaintiff's original creation; a claimed defense of "independent creation" is precluded as a matter of law.

Plaintiff's Release of "Cheater of the Year"

20. In the early 1970's, Plaintiff's father, Jack Ronald Miller, formed the idea for this song. In 1988, Plaintiff's mother recorded "Cheater (Lover) of the Year" with Plaintiff accompanying on the piano and singing harmony vocals. In the mid-1990's, Plaintiff's co-wrote and recorded the final version to this song, making significant changes to the bridge portion of the song, changing aspects of the melody, composition, chord structure, etc., In 1997, Plaintiff recorded and released the song. Plaintiff performed the song publicly at venues, including at the Stockyard Restaurant's Bullpen Lounge. The infringing version of this song and sound recording by the infringing writers, performer and producer is identical to Plaintiff's, A claimed defense of "independent creation" is precluded as a matter of law.

Plaintiff's Release of "Burnin' Rubber (Over All My Burnin' Bridges)"

21. In 2011, Plaintiff formed the idea for this song. Plaintiff completed several drafts, and completed the final version in 2014.

22. The Defendants have, without authorization or permission from Plaintiff, created a derivative work of this song and sound recording. Defendants manipulated and altered Plaintiff's song and sound recording, which is the only valid and authorized version. To write, create, produce and record this song, the Defendants knowingly and unlawfully copied original, protectable elements of the musical composition as created by Plaintiff.

The Collaboration of the Infringers and the Career of Kenny Hurst

23. In 2016, Plaintiff learns Kenny Hurst released a CD titled "Look Out Here I Come," from which the first three singles are the infringing songs. Plaintiff also learned simultaneously that the Defendants recorded a music video to Burnin' Rubber (Over Bridges I've Burned). Defendants are merchandising the song Burning Rubber via T-shirts, license plates, etc.

24. Defendants failed to secure a license to sample and exploit Plaintiff's "Ring the Bell."

25. The conduct of the Defendants constitutes direct, contributory, vicarious and/or willful infringement of Plaintiff's copyrights. All members of the distribution chain are liable for copyright infringement, including the co-writers, producers, and the entities that licensed, distributed, and sold the infringing songs, both as songs and as merchandise and performance payments.

Refusal to Respond to Plaintiff's Claims of Infringement

26. On January 15, 2017, Plaintiff sent Defendants a certified letter explaining the

Defendants' infringement of Plaintiff's copyrights. The letter sought to resolve this matter without litigation. However, Defendants ignored Plaintiff's claims and refused to engage in any dialogue regarding a resolution of these claims.

27. Instead, Defendants have continued to exploit Plaintiff's music and have continued their infringing activity. Defendants have sold digital downloads, charged cover charges to patrons at Hurst's businesses, including the Dawg Patch, and sold merchandise including license plates, T-Shirts, etc., bearing the title "Burning Rubber."

28. The music video for "Burning Rubber (Over Bridges I've Burned)" is widely available for viewing.

IV. CLAIMS FOR COPYRIGHT INFRINGEMENT

29. Plaintiff re-alleges every allegation set forth in paragraphs 1 through 28, and incorporates those allegations by reference.

30. Plaintiff owns the valid copyright that protects the original musical composition and sound recordings for the three infringing songs.

31. Plaintiff's copyright establishes prima facie evidence of the validity her copyrights.

32. The musical compositions are original works.

33. The sound recordings are original works.

34. The Infringing Writers and Infringing Producers had a reasonable opportunity to view, listen, copy, and observe Plaintiff's songs prior to the creation of Hurst's project.

35. Hurst's versions are identical; a claimed defense of "independent creation" is precluded as a matter of law.

36. The Defendants have, without authorization or permission from Plaintiff, created a derivative work of Plaintiff's music and reproduced, distributed, advertised,

produced, published, displayed, publicly performed, and otherwise exploited Plaintiff's copyrighted works, resulting in substantial revenue for Defendants.

37. Under the Copyright Act, 17 U.S.C. §§ 101, *et seq.*, Defendants have infringed Plaintiff's copyright interest in and relating to both the sound recordings and musical compositions for the infringing songs by reproducing, adapting, distributing, creating derivative work(s), and publicly performing the infringing songs through the exploitation of Hurst's endeavors.

38. From the creation of the infringing compositions and sound recordings, all of the Defendants have infringed Plaintiff's copyright interest by (a) substantially copying and publicly performing (or authorizing the copying and performances), including publicly performing "Burning Rubber" on YouTube, radio, live concerts, personal appearances, social media, video, television, and otherwise; (b) authorizing the reproduction, distribution, and sale of the CDs, records, streams, and digital downloads through the execution of licenses, and/or selling, manufacturing, and/or distributing Hurst's products; (c) substantially copying Plaintiff's work in marketing, promotion, and advertisements for the sale of Kenny Hurst's records, videos, concert tickets and other merchandise; and (d) participating in and furthering the infringing songs all through substantial use in many configurations, mixes, versions, downloads, and performed in many ways including radio, concerts, personal appearances, video, television, and other media.

39. Despite making a demand, Plaintiff has received no copyright ownership interest in and for any of Defendants' exploitations of Kenny Hurst's project. The Defendants have not acknowledged Plaintiff as the creator of the infringing songs in any way whatsoever.

40. The Defendants' conduct was intentional and undertaken with a complete disregard of Plaintiff's rights or the Defendants' conduct was willful and undertaken with actual or constructive notice that such conduct violated Plaintiff's rights and done in reckless disregard of Plaintiff's copyright interests. The infringement by Defendants continues to be willful and knowing.

41. The Infringing Writers, Infringing Performer, and Infringing Producers continue to exploit the infringing songs at public appearances, concerts, on the radio, on television, and on the Internet.

42. Defendants have induced, or materially contributed to, the infringing conduct of others, such that they should be found contributorily liable.

43. Defendants had the right and ability to control other infringers and have derived a direct financial benefit from the infringement such that the Defendants should be found vicariously liable.

44. Defendants' wrongful conduct has deprived Plaintiff of the benefit of his exclusive right to distribute, copy, display, and sell his copyrighted works, and has deprived Plaintiff of the licensing fees and royalties to which he would be entitled if the copyrighted works at issue were properly licensed.

45. As a direct and proximate result of the conduct of the Defendants, Plaintiff has been irreparably harmed and suffered actual damages including lost profits, lost opportunities, loss of goodwill, and lost publicity.

46. Under 17 U.S.C. § 504(b), Plaintiff is entitled to damages, including the substantial profits of the Defendants, in an amount to be proven at trial. Such damages cannot be fully ascertained by Plaintiff now.

47. Plaintiff is entitled to his costs and reasonable attorneys' fees under 17 U.S.C. § 505.

48. All Defendants are responsible in some manner for the events described and are liable to Plaintiff for damages available under the Copyright Act. As co-infringers, the Defendants are jointly and severally liable for all damages owed to Plaintiff for the infringements.

49. Under 17 U.S.C. § 502, Plaintiff is entitled to an injunction prohibiting the reproduction, distribution, sale, public performance, or other use or exploitation of the infringing music and title Burning Rubber.

WHEREFORE, the Plaintiff respectfully prays for entry of judgment in his favor or an order providing the following relief against Defendants:

a A declaration that the Defendants have infringed Plaintiff's "Ain't Comin' Home," "Burnin' Rubber (Over All My Burnin' Bridges)," and "Cheater of the Year;" (Musical Composition) in violation of the Copyright Act;

b A declaration that the Defendants have infringed Plaintiff's "Ain't Comin' Home," "Burnin' Rubber (Over All My Burnin' Bridges)," and "Cheater of the Year;" (Sound Recordings) in violation of the Copyright Act;

c A declaration that the Defendants are directly, vicariously, and/or contributorily liable for copyright infringement of Plaintiff's "Ain't Comin' Home," "Burnin' Rubber (Over All My Burnin' Bridges)," and "Cheater of the Year;" (Musical Compositions and Sound Recordings);

d An award of damages under 17 U.S.C. § 504(b), including actual damages and the Defendants' profits to be proven at trial;

e An award of Plaintiff's attorneys' fees and costs under 17 USC § 505;

f An injunction preventing further infringement of Plaintiff's "Ain't Comin' Home," "Burnin' Rubber (Over All My Burnin' Bridges)," and "Cheater of the Year;" copyrights; and

g Any other relief this Court finds just and proper.

Plaintiff demands a trial by jury.

Respectfully submitted,

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